



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2005

Ms. Betsy Hall Bender
Attorney at Law
P.O. Box 26715
Austin, Texas 78755-0715

OR2005-01394

Dear Ms. Bender:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 218563.

The Schertz-Cibolo-Universal City Independent School District (the "district") received a request for (1) the names of students who are in the classroom with [a named student] and the names of the parents of those students; (2) contact information for parents of students who were assaulted and possibly injured by the named student; (3) any interviews that district personnel may have conducted concerning the case; (4) the level of functioning of students who are in the classroom with the named student; and (5) documentation of the last ARD conducted concerning the named student. You inform us that the district will release some of the requested information. You claim that the rest of the requested information is excepted from disclosure under sections 552.026, 552.101, 552.103, 552.111, 552.114, and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). See 20 U.S.C. §§ 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's

education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent.¹ *See id.* § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information).

Ordinarily, education records may be withheld under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978). We also have concluded, however, that student records must be withheld in their entirety where the small number of students involved would tend to make identification of specific individuals a relatively simple task. *See* Open Records Decision No. 294 at 2 (1981). You inform us that all of the students to whom the submitted information pertains are special education students. We note that the requestor knows the name of one of the students whose records are requested. Moreover, you assert that the release of information relating to the other students would personally identify those students because of the relatively small number of students involved. You also inform us that none of the parents of the students to whom the submitted information pertains have given written permission for the disclosure of their children's education records. Based on your representations and our review of the information at issue, we find that the submitted information is confidential in its entirety under FERPA.

Next, we note that the requestor seeks access to the submitted information on behalf of the Texas Department of Family and Protective Services ("DFPS"). Although a governmental body may treat a request for information by another governmental body such as DFPS as a request under the Act, the Act does not require the governmental body that receives such a request to do so. *See* Attorney General Opinion JM-119 at 2 (1983). A transfer of information between governmental bodies is not necessarily a release to the public for purposes of the Act. *See id.* For example, an official or employee of a governmental body who, in an official capacity, requests information held by another governmental body does not act as a member of the public in doing so. Thus, an official or employee of one governmental body may review records of another governmental body without implicating the prohibition of selective disclosure under section 552.007 of the Act. *See* Attorney General Opinion JM-119 at 2 (1983); *see also* Open Records Decision No. 468 at 4 (1987).

An interagency transfer of requested information is prohibited, however, if a confidentiality statute enumerates the specific entities to which confidential information may be disclosed, and the enumerated entities do not include the requesting governmental body. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988); *see also*

¹Section 552.026 provides that the Act "does not require the release of information contained in education records of an educational agency or institution, except in conformity with the [FERPA]." Gov't Code § 552.026. Section 552.114 of the Government Code excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." *Id.* § 552.114(a). This office generally has treated a "student record" under section 552.114 as the equivalent of an "education record" under FERPA. *See* Open Records Decision No. 634 at 5 (1995).

Attorney General Opinions DM-353 at 4 n. 6 (1995), JM-590 (1986). In this instance, the applicable confidentiality statute is FERPA. FERPA authorizes the transfer of information to enumerated persons, agencies, and organizations for certain specified purposes. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.31. Under FERPA, the DFPS is not one of the persons, agencies, or organizations to which the school district may transfer the information that is at issue here. We therefore conclude that the submitted information must be withheld from the requestor in its entirety under section 552.101 of the Government Code as information made confidential by law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

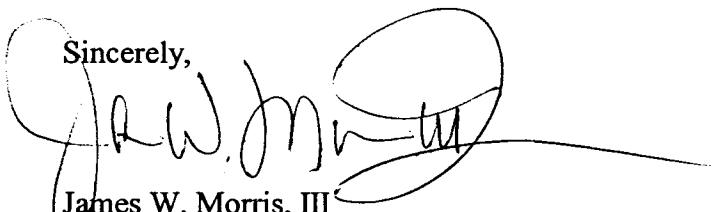
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 218563

Enc: Submitted documents

c: Ms. Shawne Ortiz
Texas Department of Family and Protective Services
314 South Saunders
Seguin, Texas 78155
(w/o enclosures)